

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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UNITED STATES OF AMERICA,

Case No. 12-CR-0012 (PJS/SER)

Case No. 14-CV-3235 (PJS)

Plaintiff,

v.

ORDER

DEMETRIUS CHARLES EDWARD  
DERDEN,

Defendant.

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This matter is before the Court on the motion of defendant Demetrius Derden to expand the scope of the remand of the United States Court of Appeals for the Eighth Circuit. After this Court denied Derden's motion under 28 U.S.C. § 2255, the Court of Appeals granted his application for a certificate of appealability in part and remanded for determination of a single issue: "whether trial counsel provided ineffective assistance of counsel by advising [Derden] that he faced a mandatory term of life imprisonment if he did not plead guilty pursuant to the agreement." ECF No. 104.

After the Court of Appeals entered its judgment, the Supreme Court issued its opinion in *Johnson v. United States*, 135 S. Ct. 2551 (2015), which struck down as unconstitutionally vague the so-called "residual clause" of the definition of "violent felony" in the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B). Derden requests

permission to argue and brief the issue of the effect of *Johnson* on this Court's finding that Derden was a career offender for purposes of U.S.S.G. §§ 4B1.1 and 4B1.2.

Derden's motion is granted, and the Court will consider the merits of his argument regarding *Johnson*. The evidentiary hearing on Derden's ineffective-assistance claim will go forward as scheduled on September 29, 2015. Because the application of *Johnson* to U.S.S.G. §§ 4B1.1 and 4B1.2 is a purely legal issue, the Court will not address the issue at the evidentiary hearing, but will instead invite the parties to address the issue in post-hearing briefing.

#### ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT Derden's motion to expand the scope of the remand [ECF No. 112] is GRANTED.

Dated: August 13, 2015

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge